IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1496 OF 2005

Cadbury India Ltd. & Another .. Petitioners.

V/s.

Union of India & Others .. Respondents.

Mr.E.P. Bharucha, senior counsel with Mr.M.P. Baxi, senior advocate with Mr.T.S. Tijoriwala and Mrs.Ketki Tijoriwala i/b. M/s.Tijoriwala & Co. for the petitioners.

Mr.M.I. Sethna with Mr.A.M. Sethna for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 20TH APRIL, 2005.

P.C. :

1. Heard counsel on both sides. Rule. Rule returnable forthwith. By consent of parties, the petition is taken up for final hearing.

2. The challenge in the present petition is to the order dated February 23, 2005 passed by the Commissioner of Central Excise (Appeals) wherein the petitioners have been directed to deposit 50% of the amount demanded under the order-in-original dated October 15, 2004 for entertaining the appeal on merits.

3. The dispute in the present petition pertains to the levy of service tax. According to the petitioners, the amounts paid by them during July 1997 to March 2002 to M/s.Cadbury Schweppes Overseas Limited ('CSOL' for short) for rendering technical assistance / royalty / brand licence fees as per the agreement entered into by and between the parties is not liable for service tax. However, the respondents have initiated proceedings for recovery of service tax and by an order-in-original dated May 7, 2004 held that the services rendered by CSOL to the petitioners are within the meaning of consultancy services and, accordingly, confirmed the demand of service tax amounting to Rs.1,21,31,000/- for the period from July 1997 to September 2001. Subsequently by another order-in- original dated October 15, 2004 demand of service tax for Rs.61,33,400/- has been confirmed for the period from October 2001 to March 2002.

4. On appeal filed by the petitioners against the order-in-original dated October 15, 2004, the Commissioner of Central Excise (Appeals) by the impugned order dated February 23, 2005 directed the petitioners to deposit 50% of the amount confirmed by

the order-in-original dated October 15, 2004. Hence, this writ petition.

5. During the course of hearing, the counsel for the petitioners brought to our notice that against the order-in-original dated May 7, 2004 the petitioners had filed an appeal which was dismissed by the Commissioner of Central Excise (Appeals). On further appeal filed by the petitioners, the Customs Excise and Service Tax Appellate Tribunal ('CESTAT' for short) by its order dated March 23, 2005 has granted total waiver of predeposit and has decided to hear the appeal on merits without any predeposit.

6. Since the demand of service tax challenged in the present petition as well as in the appeal pending before the CESTAT arise out of the same contract entered into by and between the same parties and the Tribunal has dispensed with the predeposit and stayed recovery pending appeal in respect of the earlier period, we deem it fit that in the facts of the present case, the petitioners must be permitted to contest the appeal on merits in respect of the subsequent period without any predeposit. We make it clear that we are not expressing any opinion on the merits of the case and the permission granted to the

petitioners herein to pursue the appeal without any predeposit should not be construed in any way upholding the contentions raised by the petitioners and the appellate authority is directed to decide the appeal on its own merits without being influenced by this order.

7. Accordingly, the impugned order dated February 23, 2005 is quashed and set aside. The appellate authority is directed to dispose of the appeal filed by the petitioners in accordance with law without any predeposit. All contentions of the parties are kept open.

8. The writ petition is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)